

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THOMAS J. GAVIGAN,

Plaintiff,

-against-

MEMORANDUM & ORDER
14-CV-2008 (JS)

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

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APPEARANCES:

For Plaintiff: Thomas J. Gavigan, pro se
254 West Walnut Street
Long Beach, NY 11561

For Defendant: No appearance

SEYBERT, District Judge:

On March 28, 2014,¹ pro se plaintiff Thomas J. Gavigan ("Plaintiff") filed a Complaint in this Court against the Commissioner of Social Security ("Defendant"), seeking review of the decision of the administrative law judge pursuant to section 205(g) and/or section 1631(c)(3) of the Social Security Act, as amended, 42 U.S.C. §§ 405(g) and/or 1383(c)(3). Plaintiff's Complaint is accompanied by an application to proceed in forma pauperis. For the reasons that follow, the application to proceed in forma pauperis is DENIED.

To qualify for in forma pauperis status, the Supreme Court has long held that "an affidavit is sufficient which states that one cannot because of his poverty pay or give security for the

¹ Although the Complaint is dated March 29, 2014, it was filed with the Court on March 28, 2014. (Compl. at 3.)

costs [inherent in litigation] and still be able to provide himself and dependents with the necessities of life." Adkins v. E.I. Du Pont De Nemours & Co., Inc., 335 U.S. 331, 339, 69 S. Ct. 85, 93 L. Ed. 43 (1948) (internal quotation marks and citations omitted). Plaintiff's affidavit fails to meet this standard. Plaintiff avers that he receives a monthly pension in the sum of \$10,400.00 and claims to have approximately \$30,000.00 in cash or in a checking or savings account. (Plaintiff's In Forma Pauperis Appl. ¶ 3-4.) Plaintiff lists regular monthly expenses totaling \$5,470.00. (Id. ¶ 6.) Given Plaintiff's financial position as set forth in his declaration, his motion to proceed in forma pauperis is DENIED, and he is directed to pay the \$400.00 filing fee within two (2) weeks of the date of this Order or this action will be dismissed.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore in forma pauperis status is DENIED for the purpose of any appeal. See Coppedge v. United States, 369 U.S. 438, 444-45, 82 S. Ct. 917, 8 L. Ed. 2d 21 (1962).

The Clerk of the Court is directed to mail a copy of this Memorandum and Order to the pro se Plaintiff.

SO ORDERED.

/s/ JOANNA SEYBERT
JOANNA SEYBERT, U.S.D.J.

Dated: May 12, 2014
Central Islip, New York